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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

Written statement submitted by Human Rights Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[6 March 1997]

Nikitin case - human rights and the environment

1. Human Rights Watch is deeply concerned about the issue of human rights and the environment in the Russian Federation. Freedom of expression to expose and discuss problems relating to environmental dangers, such as radioactive pollution, was dealt a grave setback in 1996 in the case of Aleksandr Nikitin, a former navy captain with the Northern Fleet who contributed research on Russian Federation nuclear submarines and radioactive waste to a publication by the Norwegian environmental foundation, Bellona.

2. On 6 February 1996, the Russian federal security service, Federalnaya Sluzhba Bezopasnosti (FSB), arrested Aleksandr Nikitin on the charge of treason and espionage through the disclosure of State secrets, which carries a maximum penalty of 20 years' imprisonment. The FSB determined Nikitin's work in writing chapter 8 and parts of chapter 2 of a Bellona report on nuclear contamination generated by the Northern Fleet to be a criminal violation of two secret Ministry of Defence decrees, one from 1992 and one from 1993, neither one disclosed to military personnel until after Nikitin had left the navy. The FSB held Nikitin in detention for six months before informing him that it was on the basis of these secret decrees, of which Nikitin had no knowledge, that he was being charged. On 14 December 1996, after over 10 months of incarceration, the Procurator General, in charge of prosecuting the case, released Nikitin on his own recognizance pending trial, but on condition that he not leave St. Petersburg. The St. Petersburg Procurator changed the restraining measure allegedly because the investigation had drawn to a close and had been turned over to the St. Petersburg city court.

3. Human Rights Watch is deeply troubled by the way in which Nikitin was treated, from the beginning of his detention until today. Although Nikitin was released, the status of his case - when and whether it will go to trial, and under which charges - is uncertain.

4. Consequently, Nikitin's freedom of movement remains limited indefinitely. His plight illustrates both the degree of power the Russian military and secret services continue to have over the lives of ordinary Russians, and the shroud of secrecy that these institutions attempt to maintain over the effects of nuclear accidents and nuclear waste disposal on the Russian environment.

5. The Bellona Foundation was founded after the nuclear disaster in Chernobyl in the Ukraine in 1986 and focuses much of its work on radioactive contamination of the environment in north-western Russia. In 1994, it engaged Nikitin as a consultant, two years after he had left the navy. While the FSB claims that Nikitin disclosed State secrets in his writing, both Bellona and Nikitin demonstrated that the information emanated from public sources. The materials Nikitin used for his detailed descriptions of accidents involving nuclear submarines had been published previously in the Russian media, and much of the information on the sensitive topic of the high frequency of accidents originated from an article by Rudolf Golosov published in the Russian newspaper Nezavisimaya Gazeta.

6. Human Rights Watch is deeply concerned by the FSB's actions and the effort to silence Nikitin and Bellona. Bellona is a very well-known

environmental organization with a strong reputation in research and advocacy. The FSB regards Nikitin as a traitor to his former employer, and Bellona as a dangerous and highly suspect foreign organization involving itself in the internal affairs of the Russian Federation. The FSB has not lodged any charges against Bellona, but since September 1996, the Ministry of Foreign Affairs has refused to grant Russian visas to Bellona employees. The arbitrary conduct of the authorities suggests that the prosecution was brought either to stop Bellona's work and conceal the truth about damage caused by radioactive contamination in Arkhangelsk, Murmansk and surrounding areas, or for other political reasons. It may also have been intended to send a powerful signal to foreign environmental organizations not to investigate the dangerous nuclear waste disposal practices of the Russian Federation. Human Rights Watch opposes governmental attempts to silence environmental critics, and therefore urges the Commission on Human Rights and Governments to examine this case closely.

7. In addition to Nikitin, several other individuals were interrogated, detained or had their homes searched in relation to this case. The criminal charge against Nikitin was initiated on 5 October 1995, when the FSB searched his apartment at night. The FSB then conducted a series of raids and searches of the homes and offices of Bellona representatives and consultants. On 18 October 1995, after it confiscated computers, diskettes and documents, the FSB made its first official statement that materials confiscated from the Bellona offices contained State secrets. During the following months, the FSB detained and questioned over 60 people in connection with Bellona, until it arrested and charged Nikitin with treason in the form of espionage.

8. The case has raised numerous issues of rights violations under both Russian and international law. The Constitution of the Russian Federation in its article 15 (3), provides that "an individual cannot be held criminally responsible for violating unpublished laws or decrees", which accords with the international principle of legality. The charges against Nikitin were based on conclusions of a committee of experts from the Headquarters of the Russian Federation Armed Forces evaluating the two secret defence decrees. Under Russian criminal procedure, the Procurator may convene commissions of experts and compose lists of questions for such commissions, at its discretion conducting these activities in cooperation with the defence. In this case, this committee was formed by the prosecution and Nikitin's defence team was completely excluded from choosing the committee members, illustrating the unfair advantage the prosecution still enjoys under Russian criminal procedure. Nikitin's defence team was consistently denied access to the secret decrees, rendering it incapable of evaluating the validity of the committee's conclusions, which has impaired Nikitin's right to a defence. Moreover, experts appointed by the prosecution have refused to answer questions posed by the defence, including questions relating to the availability of the information at issue from other public sources, and have refused to take into consideration any Russian laws that would have overriding effect on the two secret decrees.

9. The International Covenant on Civil and Political Rights, in its article 19 (3), does allow restriction of the right to expression and to receive information where it is provided by law and necessary to protect national security, but such restrictions must be narrowly construed to apply

only in the most serious cases of a direct political or military threat to the entire nation. In this case, the information on nuclear submarine accidents was quite dated and already in the public domain, and the Bellona report was unique only in elaborating on the potential for disastrous environmental consequences, as Amnesty International in its September 1996 report on the Nikitin case concluded. 1/ Moreover, both Russian constitutional and federal law prohibit the suppression of information on environmental hazards. The Constitution's article 42 mandates that every individual has a right to information concerning the condition of the environment, while article 7 of the 1993 Law on State Secrets explicitly prohibits classifying information on "extraordinary events and catastrophes that threaten national security or public health and the consequences of these events" and "ecological conditions, public health practices and sanitation". (Similar provisions can be found in the 1995 Federal Law on Information, Information Handling and Protection of Information.)

10. Human Rights Watch is concerned that the actions of the Government against Nikitin indicate the persistence of Soviet-era practices in the field of law and public information, rather than respect for domestic and international rights protections. It is deplorable that in the Russian Federation today a person can languish in custody on the basis of secret decrees, can be hounded and deprived of his liberty as punishment for telling the truth about environmental dangers, and be subject to arbitrary limitation on his freedom of movement and speech.

11. Human Rights Watch calls on the Commission on Human Rights to urge the Government of the Russian Federation to uphold the laws developed to protect individual rights in the area of access to information about the environment, and to drop criminal proceedings against Aleksandr Nikitin. Because of the environmental catastrophes which occurred during the Soviet era, Russian constitutional and statutory law today includes protection against State agencies blocking information concerning the environment. Furthermore, Human Rights Watch urges the international community to monitor the actions of the Russian Federation in this case and to ensure that the Nikitin prosecution does not augur a trend. The Commission and Governments should urge the Russian Federation not to revert to the heavy-handed tactics of the Soviet era or to violate the principle of legality by prosecuting individuals on the basis of secret decrees, ignoring the rights enshrined in international and Russian law.

1/ Amnesty International, Federal Security Services (FSB) versus Prisoner of Conscience Aleksandr Nikitin: Return to Soviet Practices (London, September 1996) AI Index EUR 46/42/96.